

**Lauren Manufacturing Company and United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC. Case 8-CA-15279**

April 13, 1982

**DECISION AND ORDER**

BY MEMBERS FANNING, JENKINS AND  
ZIMMERMAN

Upon a charge filed on October 15, 1981, by United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, herein called the Union, and duly served on Lauren Manufacturing Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint and notice of hearing on November 18, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 7, 1981, following a Board election in Case 8-RC-12414, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about September 11, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so; and also that, since on or about September 11, 1981, Respondent has refused and continues to refuse to provide necessary and relevant bargaining information requested by the Union. On December 1, 1981, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On January 18, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on January 21, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show

Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the General Counsel's motion and a Cross-Motion for Summary Judgment.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

In its answer to the complaint and its response to the Notice To Show Cause, Respondent alleges that the General Counsel's Motion for Summary Judgment should be denied inasmuch as the underlying representation election was invalid. Specifically, Respondent asserts that its line operators, alleged to be supervisors, were inappropriately allowed to vote in the election.

Review of the record herein, including the record in Case 8-RC-12414, reveals that, upon a petition duly filed by the Union on February 20, 1981, a hearing was held before a hearing officer of the National Labor Relations Board. Thereafter, the Regional Director issued a Decision and Direction of Election, wherein he found appropriate for the purposes of collective bargaining the petitioned-for unit of all production and maintenance employees, including regular part-time employees, line operators and quality control inspectors employed by the Employer at its facility located at New Philadelphia, Ohio; excluding the scheduler, all office clerical employees, and professional employees, guards, and supervisors as defined in the Act. On April 2, 1981, Respondent filed a request for review of the Regional Director's Decision and Direction of Election in which Respondent alleged, *inter alia*, that its line operators should not be included in the unit because they were supervisors within the meaning of Section 2(11) of the Act. By telegraphic order of April 29, 1981, the Board denied Respondent's request for review.

On April 29 and 30, 1981, a secret-ballot election was held among employees in the aforementioned unit. The tally of ballots showed that there were 46 votes cast for the Union, 49 against, and 14 challenged ballots, a number sufficient to affect the results of the election. On May 27, 1981, the Regional Director issued a Supplemental Decision and Order to Open and Count Challenged Ballots, wherein he ordered that the challenges to the ballots of all 14 line operators be overruled, and that their ballots be opened and counted. On June 8, 1981, Respondent filed a request for review of the

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 8-RC-12414, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended. Additionally, we hereby take official notice of the record in Case 8-RC-11818, which concerned the same parties and issues involved in Case 8-RC-12414.

Regional Director's Supplemental Decision and alleged, *inter alia*, that the Regional Director's finding that line operators were not supervisors was erroneous and not supported by the record evidence. On June 18, 1981, the Board, by telegraphic order, denied Respondent's request for review. On June 27, 1981, the challenged ballots were opened and counted and the revised tally of ballots showed that of 109 ballots cast, 56 were cast for the Union and 53 against. Thereafter, on July 7, 1981, the Regional Director issued a Certification of Representative.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>2</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.

With respect to Respondent's alleged violation of a duty to provide requested bargaining information, Respondent admits that it has refused to provide information requested by the Union in a letter dated July 24, 1981, but defends its refusal on the grounds that the Union's certification is improper. For the above-stated reasons, we find such a defense to be without merit. The Union requested that Respondent furnish it with information concerning the total number of employees in the bargaining unit, their classifications, shifts and wages, their fringe benefits, including holidays and vacations, any existing pension plan, and any existing insurance coverage. Respondent neither admits nor specifically denies that the information requested is necessary and relevant to the Union's function as the employees' representative.

It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon request.<sup>3</sup> Fur-

thermore, Respondent has not attempted to rebut the relevance of the information requested by the Union. Accordingly, we find that no material issues of fact exist with regard to Respondent's refusal to furnish the information sought by the Union in its letter of July 24, 1981. Therefore, we grant the General Counsel's Motion for Summary Judgment, and deny Respondent's Cross-Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent is now, and has been at all times material herein, an Ohio corporation engaged in the manufacture of extended rubber products at its facility located in New Philadelphia, Ohio, the sole facility involved herein. Annually, in the course and conduct of its business operations, Respondent ships goods valued in excess of \$50,000 directly from its New Philadelphia facility to points located outside the State of Ohio.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Representation Proceeding*

##### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All production and maintenance employees, including regular part-time employees, line operators and quality control inspectors employed by the Employer at its facility located at 2228 Reiser Avenue, S.E. New Philadelphia, Ohio, but excluding the scheduler, all office clerical employees, and professional employees, guards and supervisors as defined in the Act.

<sup>2</sup> See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

<sup>3</sup> *Villa Care, Inc., d/b/a Edmond's Villa Care Center*, 249 NLRB 705 (1980); *White Farm Equipment Company, A Subsidiary of White Motor Corporation*, 242 NLRB 1373 (1979); *Dynamic Machine Co.*, 221 NLRB 1140 (1975).

## 2. The certification

On April 29 and 30, 1981, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 8, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 7, 1981, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

### *B. The Request To Bargain and Respondent's Refusal*

Commencing on or about July 24, 1981, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about September 11, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Commencing on or about July 24, 1981, and at all times thereafter, the Union has requested Respondent to furnish the Union with the following information: Total number of employees in the bargaining unit; their classifications, shifts, and wages; their fringe benefits, including holidays and vacations; any existing pension plan; and any existing insurance coverage. This information is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the unit employees. Since on or about September 11, 1981, Respondent has failed and refused to furnish the Union with the information described above.

Accordingly, we find that Respondent has, since September 11, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and

tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order Respondent, upon request, to furnish the Union with information which it requested on July 24, 1981.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. Lauren Manufacturing Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, including regular part-time employees, line operators and quality control inspectors employed by the Employer at its facility located at 2228 Reiser Avenue, S.E., New Philadelphia, Ohio, but excluding the scheduler, all office clerical employees, and professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 7, 1981, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 11, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about September 11, 1981, and at all times thereafter, to furnish the Union with information requested by letter on July 24, 1981, concerning the total number of employees in the bargaining unit, their classifications, shifts and wages, their fringe benefits, including holidays and vacations, any existing pension plan, and any existing insurance coverage, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lauren Manufacturing Company, New Philadelphia, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

All production and maintenance employees, including regular part-time employees, line operators and quality control inspectors employed by the Employer at its facility located at 2228 Reiser Avenue, S.E., New Philadelphia, Ohio, but excluding the scheduler, all office clerical employees, and professional employees, guards and supervisors, as defined in the Act.

(b) Refusing to furnish the aforesaid labor organization with the information requested by it on July 24, 1981, concerning the total number of employees in the bargaining unit, their classifications,

shifts and wages, their fringe benefits, including holidays and vacations, any existing pension plan, and any existing insurance coverage.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with information which it requested for bargaining purposes on July 24, 1981.

(c) Post at its office and place of business at 2228 Reiser Avenue, S.E., New Philadelphia, Ohio, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>4</sup> In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to furnish the above-named Union with information requested by it on July 24, 1981, concerning the total number of employees in the bargaining unit, their classifications, shifts and wages, their fringe benefits, including holidays and vacations, any existing pension plan, and any existing insurance coverage.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding

is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, including regular part-time employees, line operators and quality control inspectors employed by the Employer at its facility located at 2228 Reiser Avenue, S.E., New Philadelphia, Ohio, but excluding the scheduler, all office clerical employees, and professional employees, guards and supervisors, as defined in the Act.

WE WILL, upon request, furnish the above-named Union with the information which it requested on July 24, 1981.

LAUREN MANUFACTURING COMPANY